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8                   IN THE UNITED STATES DISTRICT COURT FOR THE  
9                   EASTERN DISTRICT OF CALIFORNIA

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11 DENNIS McCORNELL,    1 :05-cv-00333-OWW-SMS-P  
12    )  
13    )  
14 vs.    )  
15 MERCY HOSPITAL, et al.,    )  
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**FINDINGS AND RECOMMENDATIONS  
RE DISMISSAL OF ACTION**  
(Doc. 14)

17                   Dennis McCornell ("Plaintiff") is a state prisoner proceeding  
18 pro se and in forma pauperis in this civil rights action pursuant  
19 to 42 U.S.C. § 1983.

20                   On June 26, 2006, the court issued an order requiring  
21 plaintiff to file an Amended Complaint within thirty (30) days from  
22 the date of service of that order. The thirty-day period has  
23 passed, and plaintiff has failed to comply with or otherwise  
24 respond to the court's order.

25                   Local Rule 11-110 provides that "failure of counsel or of a  
26 party to comply with these Local Rules or with any order of the  
27 Court may be grounds for the imposition by the Court of any and all  
28 sanctions . . . within the inherent power of the Court." District

1 courts have the inherent power to control their dockets and "in the  
2 exercise of that power, they may impose sanctions including, where  
3 appropriate . . . dismissal of a case." Thompson v. Housing Auth.,  
4 782 F.2d 829, 831 (9<sup>th</sup> Cir. 1986). A court may dismiss an action,  
5 with prejudice, based on a party's failure to prosecute an action,  
6 failure to obey a court order, or failure to comply with local  
7 rules. See, e.g. Ghazali v. Moran, 46 F.3d 52, 53-54 (9<sup>th</sup> Cir.  
8 1995) (dismissal for noncompliance with local rule); Ferdik v.  
9 Bonzelet, 963 F.2d 1258, 1260-61 (9<sup>th</sup> Cir. 1992) (dismissal for  
10 failure to comply with an order requiring amendment of complaint);  
11 Carey v. King, 856 F.2d 1439, 1440-41 (9<sup>th</sup> Cir. 1988) (dismissal for  
12 failure to comply with local rule requiring pro se plaintiffs to  
13 keep court apprised of address); Malone v. U.S. Postal Service, 833  
14 F.2d 128, 130 (9<sup>th</sup> Cir. 1987) (dismissal for failure to comply with  
15 court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir.  
16 1986) (dismissal for failure to lack of prosecution and failure to  
17 comply with local rules).

18 In determining whether to dismiss an action for lack of  
19 prosecution, failure to obey a court order, or failure to comply  
20 with local rules, the court must consider several factors: (1) the  
21 public's interest in expeditious resolution of litigation; (2) the  
22 court's need to manage its docket; (3) the risk of prejudice to the  
23 defendants; (4) the public policy favoring disposition of cases on  
24 their merits; and, (5) the availability of less drastic  
25 alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at  
26 1423-24; Malone, 833 F.2d at 130; Ferdik, 963 F.2d at 1260-61;  
27 Ghazali, 46 F.3d at 53.

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1       In the instant case, the court finds that the public's  
2 interest in expeditiously resolving this litigation and the court's  
3 interest in managing the docket weigh in favor of dismissal. The  
4 third factor, risk of prejudice to defendants, also weighs in favor  
5 of dismissal, since a presumption of injury arises from the  
6 occurrence of unreasonable delay in prosecuting an action.

7 Anderson v. Air West, 542 F.2d 522, 524 (9<sup>th</sup> Cir. 1976). The fourth  
8 factor -- public policy favoring disposition of cases on their  
9 merits -- is greatly outweighed by the factors in favor of  
10 dismissal discussed herein. Finally, a court's warning to a party  
11 that his failure to obey the court's order will result in dismissal  
12 satisfies the "consideration of alternatives" requirement. Ferdik  
13 v. Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson,  
14 779 F.2d at 1424. The court's order of June 26, 2006, expressly  
15 stated: "The failure to file an Amended Complaint will result in a  
16 recommendation that this action be dismissed, without prejudice,  
17 for failure to obey a court order." Thus, plaintiff had adequate  
18 warning that dismissal would result from non-compliance with the  
19 court's order.

20       Accordingly, the court HEREBY RECOMMENDS that this action be  
21 DISMISSED, without prejudice, based on plaintiff's failure to obey  
22 the court's order of June 26, 2006.

23       These Findings and Recommendations are submitted to the United  
24 States District Judge assigned to the case, pursuant to the  
25 provisions of Title 28 U.S.C. § 636(b)(1). Within **twenty (20) days**  
26 after being served with these Findings and Recommendations,  
27 plaintiff may file written objections with the court. Such a  
28 document should be captioned "Objections to Magistrate Judge's

1 Findings and Recommendations." Plaintiff is advised that failure  
2 to file objections within the specified time may waive the right to  
3 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153  
4 (9th Cir. 1991).

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7 IT IS SO ORDERED.

8 **Dated:** September 7, 2006  
9 icido3

/s/ **Sandra M. Snyder**  
10 UNITED STATES MAGISTRATE JUDGE

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